

CIVIL SERVICE COMMISSION MINUTES

May 2, 2001

A Regular Meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Sigrid Pate
Roy Dixon

Absent were:

Mary Gwen Brummitt
Gordon Austin

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
May 2, 2001

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego,
California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>7,9,10,11,12</u>	<u>5, 6</u>		

COMMENTS Motion by Dixon to approve all items not held for discussion;
seconded by Newman. Carried.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of April 4, 2001.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Dixon: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Eilene Marks**, Licensed Vocational Nurse, Health and Human Services Agency (HHSA), appealing an Order of Suspension and Charges by the HHSA.

Confirmed.

3. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Federico Gallardo**, former Pharmacy Technician, HHSA, appealing an Order of Removal and Charges by the HHSA.

Confirmed.

COMPULSORY LEAVE

Complaints

4. Bradley Fields, Esq., on behalf of **Kenneth Simon**, Deputy Sheriff, appealing an Order of Compulsory Leave from the Sheriff's Department.

RECOMMENDATION: Assign to a hearing officer.

Staff recommendation approved. Commissioner Newman assigned.

RESIGNATION UPON FAILURE TO RETURN AFTER LEAVE

5. **Luis Cortes**, former Eligibility Technician, HHSA, appealing a letter of Resignation Upon Failure to Return After Leave by the HHSA.

RECOMMENDATION: Continue to the next meeting per request of parties.

Staff recommendation approved. Continued.

SELECTION PROCESS

Complaints

6. **Richard Poole**, appealing the Department of Human Resources' decision to not place him on the employment list for the classification of Supervising Community Health Promotion Specialist.

RECOMMENDATION: Continue pending contact with Mr. Poole, who has been unavailable.

Staff recommendation approved. Continued.

7. **Damon Colclough**, Protective Services Worker II, HHSA, appealing his non-selection for the classification of Program Specialist II by the HHSA.

RECOMMENDATION: Deny Request.

Mr. Colclough addressed the Commission regarding his non-selection to Program Specialist II due to his failure of the Agency's background investigation. He stated that he was not given clear verbal notice; that his 6 year County work habits are above-standard, and that because HHSA is the only Agency in the County that utilizes the classification of Program Specialist II, he could not be promoted for 2 years due to the Agency's 2-year waiting period after discipline and/or below standard performance.

Lynette Mercado, Personnel Manager of HHSA explained that Mr. Colclough was notified of his failure but was not given specifics, as is the consistent practice of the Agency. Also, the 2-year waiting period is enforced by the Agency to all applicants who fail a background investigation.

The Commission requested clarification from Larry Cook, Executive Officer, as to the reasons behind staff's recommendation to deny Mr. Colclough's request. Mr. Cook explained that it is the Agency's right to establish standards for promotion. He stated that this particular issue has previously been visited by the Commission and has been tested over time. Based on the Agency's consistent criteria regarding background investigations and the 2-year period in which a candidate must prove himself/herself, staff recommended denial.

Motion by Newman to accept staff recommendation. Seconded by Dixon. Carried.

Findings

8. **Hampton Warner**, appeal of removal of his name by the Department of Human Resources from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify item No. 8. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 8 ratified.

DISCRIMINATION

Findings

9. Commissioner Dixon: **Rea Alvarez**, Senior Clerk, HHSA, alleging national origin, gender, age, and retaliation discrimination by the Office of the District Attorney (former department).

FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 17, 2001, the Commission appointed Roy Dixon to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations of national origin, gender, age and retaliation discrimination. Further, probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against.

**Motion by Dixon to approve Findings and Recommendations.
Seconded by Newman. Carried.**

10. Commissioner Brummitt: **Edwin Vargas**, former Aging Program Specialist II (APS II), HHSA, alleging gender, race, national origin and sexual orientation discrimination by the HHSA. (See also No. 11 below.)

FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on September 6, 2000, the Commission appointed Mary Gwen Brummitt to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by Commissioner Newman on behalf of Commissioner Brummitt. Commissioner Newman concurred with the findings that complainant failed to establish allegations of national origin/ ancestry, gender, and sexual orientation discrimination. Further, probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against.

**Motion by Newman to approve Findings and Recommendations.
Seconded by Dixon. Carried.**

LIBERTY INTEREST

Complaints

11. **Edwin Vargas**, former APS II, HHSA, requesting a Liberty Interest hearing regarding his failure of probation while employed as an APS II with the HHSA.

RECOMMENDATION: Staff will make an oral recommendation following the Commission's decision on No. 10 above.

Larry Cook, Executive Officer, explained that this item was held in abeyance pending the outcome of Mr. Vargas' discrimination complaint. There was nothing in Mr. Vargas' complaint or the response from HHSA to indicate that Mr. Vargas was failed on probation because of any form of misconduct. Mr. Cook quoted from case law, Lubey vs. City and County of San Francisco, in which the Commission bases its decisions regarding liberty interest requests. A liberty interest hearing is granted when an employee has been failed due to misconduct, and the failure stigmatizes employee's name and future employment opportunities. Mr. Vargas was not failed on probation due to any form of misconduct. Staff recommends denial of Mr. Vargas' request for a liberty interest hearing.

Motion by Dixon to accept staff recommendation. Seconded by Newman. Carried.

OTHER MATTERS

Seal Performance Appraisal

12. **Janis Bellinger**, Analyst II, HHSA, requesting the sealing of a Performance Appraisal for the period November 29, 1999 to November 29, 2000.

RECOMMENDATION: Grant Request.

Hawley Ridenour, Group HR Director for the Agency explained to the Commission that the Agency has put forth a good faith effort to meet the guidelines regarding this performance appraisal, and the Agency's 95% timely and accurate reporting of performance appraisals reflects this consistent effort. In this particular case, the initial guidelines were timely met, however there was a down-time of approximately 2 months due to an attempt to identify a hearing officer acceptable to both parties following Ms. Bellinger's Departmental appeal. Mr. Ridenour stressed that the importance of the information contained in this performance appraisal should not be sealed. Due to the Agency's efforts to provide a fair appeal process, its timeliness was compromised.

Ms. Bellinger indicated that the appeal process was untimely and she strongly objected to the contents of the performance appraisal.

Mr. Cook was asked to explain the reason behind staff's recommendation. He explained that the only reason staff recommended sealing was due to the fact that the appeal process was untimely by approximately 2 months.

Motion by Dixon to accept staff recommendation. Seconded by Pate.

Dixon - Aye.
Pate - No.
Newman - No.

Motion failed for lack of majority vote.

Motion by Newman to deny request to seal. Seconded by Pate.

Pate - Aye.
Newman - Aye.
Dixon - No.

Motion carried.

Mr. Cook encouraged Ms. Bellinger to select a hearing officer by May 4, 2001 from the 3 candidates identified by the Agency. Both the Agency and Employee agreed with this recommendation.

Extension of Temporary Appointments

- 13. Health and Human Services Agency
 - A. 1 Accounting Technician (Maria Lorraine Ona)
 - B. 1 Alcohol And Drug Program Specialist I (Carol Sabo)
 - C. 1 Physical Therapist I (Kristen Grande)
 - D. 1 Residential Care Worker Trainee (Melody Cortes)
- 14. Department of Public Works
 - 2 Assistant Engineers (Iovanka Todt, Edgar Garcia)
- 15. Air Pollution Control District
 - 1 Air Pollution Control Aide (Marsha Ventittelli)
- 16. Purchasing ISF
 - 1 Procurement Contracting Officer (Allen Hunsberger)
- 17. Office of the District Attorney
 - 1 Forensic Technician (Kathleen Rosario)

RECOMMENDATION: Ratify Item Nos. 13-17.

Item Nos. 13-17 ratified.

- 18. Public Input.

ADJOURNMENT: 3:10 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JUNE 6, 2001.